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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

SANTIAGO SOLORIO-GARDUNO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-76285

Agency No. A75-707-675

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted January 9, 2006\*\*

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Santiago Solorio-Garduno, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to remand and dismissing his appeal from an immigration judge's ("IJ") decision

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying his application for cancellation of removal. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review de novo claims of constitutional violations, *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001), and review for abuse of discretion the BIA's denial of a motion to remand, *Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to consider Solorio-Garduno's contention that the BIA denied him due process by finding that he failed to show exceptional and extremely unusual hardship. *See Torres-Aguilar*, 246 F.3d at 1271 (holding the court lacks jurisdiction over a challenge to a discretionary hardship determination that is simply recast as a due process claim).

The BIA did not abuse its discretion in denying Solorio-Garduno's motion to remand on the ground that Solorio-Garduno failed to show that the newborn child would suffer the requisite hardship. *See* 8 C.F.R. § 1003.2(c)(1); *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (holding that prima facie eligibility is demonstrated by a showing that there is a reasonable likelihood that the statutory requirements for relief have been satisfied).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**